IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2044 OF 2007
Along with
Civil Application No.5002 of 2006

Mr Devdatta Ravindra Sharma, .. Appellant.
Vs
Mr Ramesh Vegaram Sharma
and ors. .. Respondents

Mr T.D.Deshmukh, for the appellant.
Mr S.B.Deshmukh, for respondent nos 1 to 4.

CORAM : D.B.BHOSALE,J.
DATED : 17th SEPT., 2007

P.C.:

1. Heard the learned counsel for the parties. Admit. By consent of the learned counsel, heard forthwith for final disposal.

2. By this appeal, the appellants have challenged an order of the Deputy Charity Commissioner, Pune Region, Pune, purportedly passed under section 47(2) of the Bombay Trusts Act, 1950, appointing two trustees-respondent nos 2 and 3 as new trustees of the trust. It appears that a scheme under section 50A(1) of the Bombay Public Trust Act was framed on 7.6.1974 by the Joint Charity Commissioner. Paragraph 9 of the scheme provides that if a vacancy occurs the remaining trustees would fill in the vacancy by passing unanimous resolution in that behalf within three months and if that was not done, it would be lawful for the Charity

Commissioner at any time after three months to appoint a new trustee/s of the Trust as he may deem fit and proper. It appears that the first vacancy arose in October, 2005 and the second on 20.1.2006. Thereafter, respondent nos 2 and 3 made an application for their appointment as trustees on 31.1.2006 which came to be allowed by the impugned judgment dated 20.3.2006. Admittedly, the application was allowed without issuing notice to the other trustees including the present appellant. The Deputy Charity Commissioner, while allowing the application filed by respondent nos 2 and 3 in paragraph 4 of the impugned order has made an observation to the effect that "the application is being partly and conditionally allowed neither by admitting the case of the applicant nor by denying the probable objections, if any, against the appointment." Keeping that in view and considering that the application was filed by respondent nos 2 and 3 before expiry of the period of three months as contemplated by paragraph 9 of the scheme and considering that the trustees appointed by the impugned order are functioning as trustees since March,2006 and have attended three meetings of the trust so far, I am satisfied that the following order shall meet the ends of justice.

(i) The impugned judgment dated 20.3.2006 is

quashed and set aside subject to the following directions:

(a) The Deputy Charity Commissioner, Pune Region, Pune, shall hear Misc.Application No.5/2006 filed by respondent nos 2 and 3 afresh after giving an opportunity of being heard to the trust and the remaining Trustees and shall decide the same afresh on merits in accordance with law as expeditiously as possible and preferably within a period of three months from the date of receipt of this order.(b) Until the application is decided afresh, the impugned order appointing respondent nos 2 and 3 shall remain in force. (c) Respondent Nos 2 and 3 are allowed to function as trustees in pursuance of the order impugned in the present petition till the disposal of their MISC Application, as aforestated and subject to the order passed thereon. With these directions,the First Appeal and the civil application stand disposed of.

(D.B.BHOSALE,J.)